



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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MAR 29 2019

OFFICE OF
WATER AND
WATERSHEDS

The Honorable Nathan Small
Chairman, Shoshone-Bannock Tribes
PO Box 306
Fort Hall, Idaho 83203

Re: Consultation on the Environmental Protection Agency's (EPA) Clean Water Act Decisions regarding Idaho's Adoption of Aquatic Life Criteria for Selenium and Site-Specific Criterion for Temperature in the Hells Canyon Reach of the Snake River

Dear Chairman Small:

On behalf of myself and the other members of the EPA team, I would like to express our gratitude to you, the Fort Hall Business Council, and tribal staff for your generosity with your time to meet with us on February 28, 2019 to discuss the Idaho water quality standards submissions referenced above. We appreciate the perspectives and questions raised by the Tribe regarding these Clean Water Act section 303(c) decisions before the EPA.

The purpose of this letter is to summarize what we heard during the February 28 formal government-to-government consultation meeting, as well as what we heard in separate coordination meetings between the EPA and tribal staff, and the next steps moving forward. The summary of what we heard and the EPA's follow-up actions are organized by topic below.

The Importance of Healthy Waters

Several members of the Council emphasized the perspective that, while decisions about particular criteria are important, what really matters are the actions that actually protect and improve water quality. We discussed and agreed that it takes consistent attention (e.g. through permits and enforcement) to realize the aspirations of the criteria.

Hells Canyon SSC for Temperature

- The Tribe expressed concerns regarding the FERC relicensing process for the Hells Canyon Dam Complex and the associated CWA section 401 water quality certifications by the states of Oregon and Idaho. The EPA provided background information on the certification process and the status (to the best of our knowledge). The Tribe highlighted concerns regarding the fish passage agreement, and that the upstream program may not result in enough improvement toward meeting downstream water quality standards.
- The Tribe expressed concern about the scope of the Biological Evaluation and whether it would capture all of the potential effects. Specifically, the Tribe requested that the EPA:
 - 1) review all the existing fish studies carefully including their life cycles and exposures over time;

- 2) analyze the uncertainties and implications of the action (i.e. cumulative effects), including the stressors associated with each life stage; and
- 3) consider how the SSC may narrow the diversity, and therefore acclimation ability, of fish species, especially the fall-run Chinook.

Selenium Criteria

- Regarding Idaho's adoption of the EPA's nationally recommended criteria for portions of the state, the Tribe confirmed it had no concerns.
- Regarding the non-sturgeon site-specific criteria, tribal staff did not agree with DEQ's policy decision to apply the non-sturgeon site-specific criteria to waters where experimental stocking of sturgeon occurs.
- The Tribe asked how the EPA is ensuring that water quality is protected pertaining to the five site-specific criteria. For example, what is the EPA's compliance and enforcement presence in the state?
- The Tribe has observed a decline in water quality over time, yet it is unclear how the different EPA programs are working together to ensure environmental protection.

Follow-Up Actions

1. Hells Canyon SSC
 - The EPA's interim goal is to take CWA action on or submit a Biological Evaluation of the temperature SSC to initiate formal Endangered Species Act section 7 consultation with the National Marine Fisheries Service and Fish and Wildlife Service by April 5, 2019. The EPA has reviewed and incorporated as much as possible the input provided by the Tribe (summarized above) into the Biological Evaluation. At the Council's request, we plan to share a copy of the final Biological Evaluation with the Tribe once it is submitted to Services.
 - We will continue to keep the Tribe updated, including the timing of the EPA's final CWA decision.
2. Selenium
 - On March 13, 2019, the EPA shared with tribal staff the technical comments describing our concerns on the SSCs developed for North Fork Sage and Pole Canyon Creeks. We have a meeting scheduled on April 4 with DEQ and Simplot to discuss our analysis and concerns.
 - The EPA tentatively plans to move forward with approving the following provisions pursuant to our CWA section 303(c) authority:
 - Adoption of the nationally recommended CWA section 304(a) criteria
 - Sturgeon-absent SSC
 - SSC for portions of the Blackfoot River
 - SSC for Georgetown Creek
 - SSC for South Fork Sage Creek, Hoopes Springs; however, we will defer action on North Fork Sage and Pole Canyon Creeks, including all tributaries.
 - SSC for Crow Creek
 - The EPA will continue to keep the Tribe updated of our progress and remain available to answer any questions and provide additional information.

Finally, as you may recall, the state has recently adopted the nationally recommended CWA section 304(a) criteria for copper and submitted the water quality standards package to the EPA for review on January 28, 2019. We had planned to discuss the copper submission with the Council during the meeting on February 28; however, due to time constraints, we instead shared a summary paper with the Council after the meeting. On March 26, 2019, Candon Tanaka informed us that the Council does not wish to seek government-to-government with the EPA on this matter. We appreciate this follow-up very much.

Again, thank you for your time and interest in the EPA's CWA actions. If you would like more information, or have questions or concerns, please contact me at (206) 553-1855 or Hanh Shaw, our Water Quality Standards Unit Manager, at (206) 553-0171 or shaw.hanh@epa.gov.

Sincerely,



Daniel D. Opalski
Director

Electronic cc: Candon Tanaka, Water Quality Standards Specialist